



IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

CAROLEN THOMAS,
Plaintiff,

v.

ALABAMA STATE PERSONNEL
BOARD,
Defendant.

Civil Action No.: 03-CV-2013-902133

ORDER

This matter comes before this Court on Petitioner's administrative appeal. This Court has reviewed the file, including briefs, and the administrative record on appeal, and finds the following:

Petitioner was dismissed from the Alabama Department of Public Health (hereinafter "DPH"). The dismissal was based on a complaint received by DPH as to Petitioner's conduct during a survey of a nursing home. DPH, during the dismissal process, did not disclose the complaint or any statements to the Petitioner as these documents were part of DPH's investigative file; however, the Petitioner was aware of the information contained in the documents through the investigation, the pre-dismissal conference, and the administrative appeal. Petitioner claims that failure to provide her copies of this information is in violation of Ala. Code 1975 § 36-26-27.1 which provides:

Notwithstanding any other laws, rules, or regulations to the contrary, when a document pertaining to disciplinary action, including, but not limited to, written reprimands, suspensions, notes pertaining to oral reprimands or counseling regarding a state employee, or notes pertaining to matters that may be used regarding the employee in a disciplinary action are placed in the employee's personnel file, the agency which is the employer shall supply a copy of the documentation to the employee no

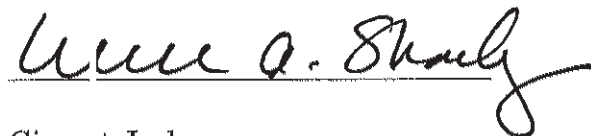
later than 10 days after its inclusion in his or her personnel file. In the event that the information is not provided to the employee within 10 days as herein required, the reprimands or notes shall be removed from the employee's file and shall not be used against the employee in any future proceeding or disciplinary action.

The documents at issue are those that were in DPH's investigative file; not in the Petitioner's personnel file. Therefore, there is no violation of Ala. Code § 36-26-27.1. Petitioner, however, argues that these documents are fundamental to ensuring a fair due process hearing. This Court agrees.

It is hereby ordered that this matter be remanded to the Alabama State Personnel Board. The State Personnel Board is to order that the Alabama Department of Public Health to provide the documents, including all statements, related to the investigation of Petitioner Thomas. The State Personnel Board should allow for the Administrative Law Judge to accept additional testimony and evidence should it be needed.

Therefore, this case is remanded to the State Personnel Board with instructions.

Done this the 5 day of August, 2014.

A handwritten signature in black ink, appearing to read "W. A. Shaul", written over a horizontal line.

Circuit Judge